

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1 JOHN E. SCHREIBER (261558)
WINSTON & STRAWN LLP
2 333 S. Grand Avenue #3800
Los Angeles, CA 90071-1543
3 Telephone: (213) 615-1700
Facsimile: (213) 615-1750
4 Email: jschreiber@winston.com

5 JEFFREY L. KESSLER (*pro hac vice*)
A. PAUL VICTOR (*pro hac vice*)
6 GEORGE E. MASTORIS (*pro hac vice*)
WINSTON & STRAWN LLP
7 200 Park Avenue
New York, NY 10166-4193
8 Telephone: (212) 294-6700
Facsimile: (212) 294-4700
9 Email: jkessler@winston.com

10 Attorneys for Plaintiffs
HARMONI INTERNATIONAL SPICE, INC. AND
11 ZHENGZHOU HARMONI SPICE CO., LTD.

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 HARMONI INTERNATIONAL SPICE,
INC., a California corporation, and
16 ZHENGZHOU HARMONI SPICE CO.,
LTD., a corporation,

17 Plaintiffs,

18 v.

19 WENXUAN BAI, an individual, et al.,

20 Defendants.
21
22
23
24
25
26
27
28

Case No. 2:16-cv-00614-BRO-ASx

Hon. Beverly Reid O'Connell

**PLAINTIFFS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF OPPOSITION TO DEFENDANTS
C AGRICULTURE GROUP CORP.,
JIN XIA WEN, AND MINGJU XU'S
MOTION TO DISMISS AND/OR
STRIKE THE FIRST AMENDED
COMPLAINT**

Hearing: April 18, 2016, 1:30 p.m.
Courtroom: 14

Pursuant to Federal Rule of Evidence 201 and in connection with its concurrently filed Opposition to Defendants C Agriculture Group Corp., Jin Xia Wen, and Mingju Xu's (the "C Agriculture Defendants") Motion to Dismiss and/or Strike the First Amended Complaint, Plaintiffs respectfully request that the Court take judicial notice of the following attached exhibits:

1. Exhibit 1 is a true and correct copy of the website of James J. DeCristofaro, available at <http://www.dclfirm.com/About/James-J-Decristofaro.shtml>.

2. Exhibit 2 is a true and correct copy of a letter, dated March 9, 2016, sent by Robert T. Hume addressed to the Honorable Penny Pritzker regarding "*Fresh Garlic from the People's Republic of China, 21st Administrative Review – Comments on 'Harmoni Withdrawal of Review Request' filed on behalf of Qingdao Tiantaixing Foods Co., Ltd.*"

A court may consider judicially noticeable facts in connection with a motion to dismiss. *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000); see also *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986). A court may also consider documents outside the pleadings if: (1) the complaint refers to such document; (2) the document is "central" to plaintiff's claim; and (3) no party questions the authenticity of the copy attached to the Rule 12(b)(6) motion. *United States v. Corinthian Colleges*, 655 F. 3d 984, 999 (9th Cir. 2011); *Chambers v. Time Warner, Inc.* (2nd Cir. 2002) 282 F3d 147, 153, n. 3. Judicial notice is appropriate where "the plaintiff's claim depends on the contents of a document ... even though the plaintiff does not explicitly allege the contents of that document in the complaint." *Knieval v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (citing *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998), superseded on other grounds by statute as stated in *Abrego v. The Dow Chem. Co.*, 443 F.3d 676 (9th Cir. 2006)).

The First Amended Complaint ("FAC") alleges that "On November 18, 2014, attorney James J. DeCristofaro sent a letter to Harmoni on behalf of C Agriculture". FAC ¶ 249. "In the letter, C Agriculture alleges that Harmoni and one of its major

1 customers, Christopher Ranch, ‘acted together’ in order to sell peeled garlic ‘at a price
2 significantly below the U.S. market price for peeled garlic,’ and that this
3 ‘arrangement’ constitutes an ‘unreasonable restraint of trade’ that violates the antitrust
4 laws.” *Id.* ¶ 250. Plaintiffs allege that the C Agriculture Defendants made the false
5 allegations claims in the letter in an effort to defame and extort Harmoni, and had no
6 “good faith intention to actually file a lawsuit against Harmoni.” *Id.* ¶¶ 254, 257.
7 Exhibit 1 is a true and correct copy of the web page of James DeCristofaro,
8 demonstrating does not appear to have any experience litigating the sort of antitrust
9 claims he threatens to bring against Plaintiffs. The Court may take judicial notice of
10 this letter because the Ninth Circuit has “extended the ‘incorporation by reference’
11 doctrine to situations in which the plaintiff’s claim depends on the contents of a
12 document ... even though the plaintiff does not explicitly allege the contents of that
13 document in the complaint.” [Knieval, 393 F.3d at 1076](#) (motion to dismiss granted
14 after taking judicial notice of the contents of web pages not alleged in the complaint);
15 *see also Paralyzed Veterans of Am. v. McPherson, No. C064670SBA, 2008 WL*
16 [4183981, at *5 \(N.D. Cal. Sept. 9, 2008\)](#) (“It is not uncommon for courts to take
17 judicial notice of factual information found on the world wide web.”) (internal
18 citations and quotation marks omitted).

19 In addition, the FAC alleges that the fraudulent statements in the C Agriculture
20 Defendants’ November 18, 2014 letter are closely related to the numerous other
21 predicate acts perpetrated in furtherance of the Enterprise’s scheme. FAC ¶¶ 31, 127-
22 30, 258. Exhibit 2 is a letter sent to the Department of Commerce repeating the same
23 false allegations of Plaintiffs’ use of prison labor and attaching the C Agriculture
24 Defendants’ letter in purported support of these claims, making the C Agriculture
25 Defendants’ connection to the Enterprise more explicit. The Court may take judicial
26 notice of this letter because the Ninth Circuit has “extended the ‘incorporation by
27 reference’ doctrine to situations in which the plaintiff’s claim depends on the contents
28 of a document ... even though the plaintiff does not explicitly allege the contents of

1 that document in the complaint.” Knieval, 393 F.3d at 1076; *see also Del Puerto*
2 *Water Dist. V. U.S. Bureau of Reclamation, 271 F. Supp. 2d 1224 (E.D. Cal. 2003)*
3 (holding a court may take judicial notice of matters of public record, including papers
4 filed with administrative bodies).

5 For the reasons stated above, Plaintiffs respectfully request that this Court take
6 judicial notice of the documents attached hereto as Exhibits 1 and 2.

7
8 Dated: March 28, 2016

WINSTON & STRAWN LLP

9
10 By: /s/ John E. Schreiber

11 John E. Schreiber

Jeffrey L. Kessler

A. Paul Victor

George E. Mastoris

12
13 *Attorneys for Plaintiffs*
14 *HARMONI INTERNATIONAL*
15 *SPICE, INC. and ZHENGZHOU*
16 *HARMONI SPICE CO., LTD.*

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543